



6550-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 300**

### **FRL-9739-9-OW]**

## **National Oil and Hazardous Substances Pollution Contingency Plan; Listing of Trustee Designations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

---

**SUMMARY:** In this action, the Environmental Protection Agency (EPA or “the Agency”) is conforming the listing of trustee designations for natural resources in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) in accordance with Executive Order (E.O.) 13626, “Gulf Coast Ecosystem Restoration,” issued on September 10, 2012. E.O. 13626 designated the Administrator of EPA and the Secretary of the United States Department of Agriculture (USDA) to act as additional trustees for Natural Resource Damage Assessment and restoration solely in connection with injury to, destruction of, loss of, or loss of use of natural resources, including their supporting ecosystems, resulting from the Deepwater Horizon Oil Spill. The Administrator’s and Secretary’s trusteeship became effective immediately pursuant to the President’s designation. This action is being taken pursuant to a directive in the Executive Order to revise Subpart G of the NCP to reflect the additional designations for the Deepwater Horizon Oil Spill. This action applies to the Deepwater Horizon Oil Spill only, and does not

affect any prior or subsequent designations.

**DATES:** This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**FOR FURTHER INFORMATION CONTACT:** Ms. Gale C. Bonanno, Office of Water (4503-T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C., 20460; telephone number 202-564-2243; e-mail address: [bonanno.gale@epa.gov](mailto:bonanno.gale@epa.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with E.O. 13626 of September 10, 2012 (77 FR 56749, September 13, 2012), entitled, “Gulf Coast Ecosystem Restoration,” EPA is revising Subpart G of the NCP, 40 CFR part 300, to reflect the President’s designation of the Administrator of EPA and the Secretary of Agriculture as additional trustees in connection with injury to, destruction of, loss of, or loss of use of natural resources, including their supporting ecosystems, resulting from the Deepwater Horizon Oil Spill. Section 5 of E.O. 13626 provides as follows:

Sec. 5. Designating Trustees for Natural Resource Damage Assessment. Given their authorities, programs, and expertise, the Environmental Protection Agency (EPA) and the Department of Agriculture (USDA) have institutional capacities that can contribute significantly to the Natural Resource Damage Assessment and restoration efforts, including scientific and policy expertise as well as experience gained in the Task Force process and other planning efforts in the Gulf area. In addition, EPA’s and USDA’s relevant authorities cover a range of natural resources and their supporting ecosystems, including waters, sediments, barrier islands, wetlands, soils, land management, air resources, and drinking water supplies. The inclusion of EPA and USDA as trustees participating in the Natural Resource Damage Assessment and restoration efforts will maximize coordination across the Federal Government and enhance overall efficiencies regarding Gulf Coast ecosystem restoration. Accordingly, without limiting the designations in Executive Order 12777 of October 18, 1991, or any other existing designations, and pursuant to section 2706(b)(2) of title 33, United States Code, I hereby designate the Administrator of EPA and the Secretary of Agriculture as additional trustees for Natural Resource Damage Assessment and restoration solely in connection with injury to, destruction of, loss of, or loss of use of natural resources, including their supporting ecosystems, resulting from the Deepwater Horizon Oil Spill. The addition of these Federal trustees does not, in and of itself, alter any existing agreements among or between the trustees and any other entity. All Federal trustees are directed to consult,

coordinate, and cooperate with each other in carrying out all of their trustee duties and responsibilities.

The Administrator of EPA is hereby directed to revise Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan to reflect the designations for the Deepwater Horizon Oil Spill discussed in this section.

Today EPA is issuing a final rule revising Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan to reflect the designations for the Deepwater Horizon Oil Spill discussed in Section 5 of the E.O.

E.O. 13626 is an exercise of the President's statutory authorities under section 311 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321), section 1006 of the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2706), and 3 U.S.C. 301. Under OPA section 1002, those responsible for oil spills are liable for, among other things, damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage. These damages are recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee. 33 U.S.C. 2702(b)(2)(A). Under OPA section 1006, Federal trustees are authorized to pursue claims for natural resource damages under 33 U.S.C. 2702(b)(2)(A) for natural resources belonging to, managed by, controlled by, or appertaining to the United States. 33 U.S.C. 2706(a). Designated Federal trustees are authorized to: assess natural resource damages for the natural resources under their trusteeship; upon request of and reimbursement from a State or Indian tribe and at the Federal officials' discretion, assess damages for the natural resources under the State's or tribe's trusteeship; and develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship. 33 U.S.C. 2706(c).

In compliance with Section 5 of E.O. 13626, today EPA is amending subsection 300.600(b) of Subpart G of the NCP to include a new paragraph (5).

The designation of the Administrator of EPA and the Secretary of Agriculture as trustees for the Deepwater Horizon Oil Spill was effective upon the President's signature of E.O. 13626. This action merely conforms the NCP's trustee "listing" provisions for purposes of identifying the relevant trustees for a particular incident under OPA. *See* 40 CFR 300.3(b)(6); 59 FR 47385 (Sept. 15, 1994). This action is taken solely to comply with E.O. 13626 and includes no other amendments to the NCP or other regulatory action. This action applies to the Deepwater Horizon Oil Spill only, and does not affect any prior or subsequent designations.

Regulations and procedures governing the conduct and functions of trustees for natural resources under OPA are provided in the NCP, and the Natural Resource Damage Assessment (NRDA) regulations at 15 CFR Part 990 issued by the National Oceanic and Atmospheric Administration (NOAA) pursuant to OPA section 1006(e), 33 U.S.C. 2706(e).

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. There is good cause to revise Subpart G of the NCP without providing notice and an opportunity for public comment. Notice-and-comment rulemaking is unnecessary because this action is ministerial in nature. The President exercised his statutory authority under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), section 1006 of the Oil Pollution Act of 1990 (33 U.S.C. 2706), and 3 U.S.C. 301 to designate the Administrator and the Secretary as trustees and directed EPA to revise Subpart G of the NCP accordingly. There is no discretion to alter the designation and this is simply a revision to the text of the Code of Federal Regulations to reflect the designations made by the President. Providing an opportunity for notice and comment, therefore, is unnecessary.

There also is good cause under APA section 553(d)(3) for this revision to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements or take other actions such that affected parties would need time to prepare before the rule takes effect. Rather, this action merely revises the listing of trustees in Subpart G of the NCP to reflect designations done by the President through E.O. 13626. For these reasons, there is good cause under APA section 553(d)(3) for this revision to become effective on the date of publication of this action.

## **STATUTORY AND EXECUTIVE ORDER REVIEWS:**

### **A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review**

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

### **B. Paperwork Reduction Act**

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). This action merely revises the list of trustee designations in Subpart G of the NCP to reflect new designations the President made in E.O. 13626 and does not require the collection of any information.

### **C. Regulatory Flexibility Act**

Today's final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because it does not impose any requirements on any entity, including small entities.

### **D. Unfunded Mandates Reform Act**

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

### **E. Executive Order 13132 (Federalism)**

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely revises the list of trustee designations in

Subpart G of the NCP to reflect new designations the President made in E.O. 13626. Thus, Executive Order 13132 does not apply to this action.

#### **F. Executive Order 13175**

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It does not create new binding legal requirements that substantially and directly affect Tribes. Thus, Executive Order 13175 does not apply to this action.

#### **G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks**

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

#### **H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use**

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

#### **I. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest

extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.



## **J. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

## **List of Subjects in 40 CFR Part 300**

Environmental protection, Chemicals, Hazardous materials, Hazardous substances, Intergovernmental relations, Natural resources, Oil pollution.

Dated: June 18, 2014

Gina McCarthy,  
Administrator.

For the reasons set out in the preamble, 40 CFR Part 300 is amended as follows:

**PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION  
CONTINGENCY PLAN**

1. The authority citation for part 300 is revised to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p.306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

**Subpart G – Trustees for Natural Resources**

2. Section 300.600 is revised by adding paragraph (b)(5), to read as follows:

**§ 300.600 Designation of federal trustees.**

\* \* \* \* \*

(b) \* \* \*

(5) *Additional trustees for the Deepwater Horizon Oil Spill.* The Administrator of EPA and the Secretary of Agriculture shall act as trustees in connection with injury to, destruction of, loss of, or loss of use of natural resources, including their supporting ecosystems, resulting from the Deepwater Horizon Oil Spill.